

April 30, 2015

Ms. Henry A. Leskinen  
Eco-Science Professionals, Inc.  
P.O. Box 5006  
Glen Arm, Maryland 21057

Re: Smith Property, Vernon  
Forest Conservation Special Variance  
Tracking #03-15-1967

Dear Mr. Leskinen:

A request for a variance from Baltimore County's Forest Conservation Law was received by the Department of Environmental Protection and Sustainability (EPS) on March 31, 2015. The site comprises 72.2 acres and is located at the terminus of York Manor Road and Sagewood Road in the Jacksonville section of Baltimore County. The entire site is forested Tulip Poplar association and is considered priority for retention since it is part of a contiguous tract of forest greater than 100 acres and contains specimen trees. In addition, a large portion of the site contains high priority structure and/or occurs within the forest buffer. Greene Branch, a Use III stream and a tributary to Loch Raven Reservoir, crosses the southern portion of the site. A number of small tributaries to Greene Branch are also present onsite.

This variance request proposes to remove 26 of 63 specimen trees for the purpose of constructing a residential, major subdivision, consisting of 14 lots containing single-family homes and associated infrastructure. The 63 trees are present outside of or near the edge of the forest buffer north of Greene Branch. Specimen trees within the forest buffer and south of Greene Branch were not identified since these areas will not be disturbed by any future development. The size range of the 26 trees to be removed is from 30 inches to 48 inches in diameter at breast height (DBH) and are predominately Tulip Poplar, but also include Red Oak, Black Oak and American Beech. Thirty seven specimen trees are not proposed to be impacted.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One of the three criteria under Subsection 33-6-116 (d) must be met, and all three of the criteria under Subsection 33-6-116 (e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The applicant proposes to remove 26 specimen trees on the 72.2 acre site. The 26

trees are located within forest identified as priority for retention and are to be cleared in the upland areas of the property. Section 33-6-111(b) states, in part, that areas considered priority for retention shall be left in an undisturbed condition unless the applicant has demonstrated to the satisfaction of the Department that reasonable efforts have been made to protect them, that the plan cannot be reasonably altered, and the plan complies with all other applicable laws. Twenty of these trees cannot be retained without severely impacting the feasibility of the project. Many of them are associated with the proposed extensions of York Manor Road and Sagewood Road to enter the development, or are specimen trees located on various proposed lots. Denying this variance request would deprive the applicant of a reasonable use of the property. The applicant has demonstrated to the satisfaction of the Department, why these priority areas cannot be left in an undisturbed condition, that reasonable efforts have been made to protect them and that the plan cannot be reasonably altered. Therefore, this criterion is met for 20 of the specimen trees, as shown on the plan. Six specimen trees, identified on the plan as Trees J, K, L, M, N, and O, are a cluster of closely-grouped specimen trees on Lot 8. These trees are not associated with the development's proposed road extensions, are located within forest that has been identified as priority for retention and are immediately adjacent to the forest buffer. The applicant has not demonstrated to the satisfaction of the Department why this priority area cannot be left in an undisturbed condition, that reasonable efforts have been made to protect them and that the plan cannot be reasonably altered. Denying this variance request to remove these six specimen trees would not deprive the applicant a reasonable use of the property. Therefore, this criterion has not been met for these six specimen trees on Lot 8.

The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions in the neighborhood. The variance request arises from a unique situation concerning the location of the specimen trees on the site, relative to the forest buffer, other forest areas onsite, the area of the property that can be developed and the infrastructure requirements. The development proposal is based on these unique conditions of the property, and not from general conditions of the neighborhood. Therefore, this criterion is met.

The third criterion (Subsection 33-6-116 (d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. This 72.2 acre property is proposed to be subdivided into 14 total lots. It is bounded on the north east and south by single-family dwellings on lots of various sizes, and on the west by single-family dwellings located along Paper Mill Road. Of the 72.2 acres, 50.7 acres will be protected by Forest Conservations Easements and Forest Buffer Easements, including floodplains, all of which protects Greene Branch and its tributaries, and other forest onsite that is contiguous to large tracts of forest offsite. Therefore, the proposed subdivision development of the site would be compatible with the neighborhood, and this criterion is met.

The fourth criterion (Subsection 33-6-116 (e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. An adequate forest buffer has been proposed to provide water quality management for the streams located on the site. Stormwater

Mr. Henry A. Leskinen  
Smith Property, Vernon  
Forest Conservation Special Variance  
Tracking # 03-15-1967  
April 30, 2015  
Page 3

management is being provided for the development in accordance with current County regulations. Therefore, this criterion is met.

The fifth criterion (Subsection 33-6-116 (e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance, which is the result of actions taken by the petitioner. The petitioner has not taken any action on the property that would necessitate this variance request. Therefore, this criterion is met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code. Twenty of the trees to be impacted, as identified on the plan, cannot be retained without severely impacting the feasibility of the project. As stated above, many of them are associated with the proposed extensions of York Manor Road and Sagewood Road, to enter the development, or are present on various proposed lots. Denying this variance would deprive the applicant of a reasonable use of the property. The applicant has demonstrated to the satisfaction of the Department why these priority areas for retention cannot be left in an undisturbed condition, that reasonable efforts have been made to protect them and that the plan cannot be reasonably altered. The 20 specimen trees to be impacted are located within existing forest, and the applicant is required by the law to mitigate forest impacts by meeting all forest conservation requirements. In this case, requirements will be met by forest retention onsite. Therefore, this criterion is met for the removal of the twenty specimen trees shown on the plan with this variance request. This criterion is not met for the removal of the six specimen trees identified on the plan as trees J, K, L, M, N, and O because the applicant has not demonstrated to the satisfaction of the Department why this priority area cannot be left in an undisturbed condition, that reasonable efforts have been made to protect it and that the plan cannot be reasonably altered. If the variance request was approved to allow for impacts to the priority area containing the six specimen trees, it would be inconsistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code. Therefore, this criterion is not met and this variance request is denied for the removal of the six trees on Lot 8, within this priority area for retention.

Based upon our review, this Departments finds that the required variance criteria have not been met for the removal of the six specimen trees identified on the plan as trees J, K, L, M, N, and O. Therefore, the variance request to impact these six trees is hereby denied. This Department also finds that the required variance criteria have been met for the removal of the remaining twenty specimen trees identified on the plan. Therefore, the variance is hereby approved for the removal of those twenty specific specimen trees, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. Meeting forest conservation requirements for the area of forest cleared will provide any necessary mitigation for the impact to the twenty specimen trees to be removed, shown on the plan with this variance request, as these trees exist within the forest. A Forest Conservation Plan for this project must be approved prior to grading permit approval.

Mr. Henry A. Leskinen  
Smith Property, Vernon  
Forest Conservation Special Variance  
Tracking # 03-15-1967  
April 30, 2015  
Page 4

2. A note must be added to all plans stating that a variance was granted by Baltimore County EPS to allow for impacts to 20 specimen trees on this project site, and that mitigation was provided by meeting all forest conservation requirements as outlined on the forest conservation plan for the project.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and an amended, or new variance request.

Please have the property owner sign the statement below and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Thomas Panzarella at (410) 887-3980.

Sincerely yours,

Vincent J. Gardina  
Director

VJG/tcp

c: Marian Honecny MDDNR

\*\*\*\*\*

I/we agree to the above conditions to bring my/our property into compliance with Baltimore County Forest Conservation Law.

---

Property Owner(s)

Date

---

Printed Name(s)